

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION
CONSERVATION DISTRICTS DIVISION



TED SCHWINDEN, GOVERNOR

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STATE OF MONTANA

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HELENA, MONTANA 59620

December 11, 1984

Cathy Jones, Resource Conservationist
Flathead Conservation District
35 West Reserve Drive
Kalispell, MT 59901

Dear Cathy:

Enclosed for your review is a document providing a complete description of the State of Michigan's assumption of the permitting process required by Section 404 of the Clean Water Act. Rather than try to explain their program in a letter, I thought it would be more appropriate to let you examine the document that illustrates the process as it took place in Michigan, including the final program as it now exists.

I have spent a good deal of time reviewing the document to assess the feasibility of the State of Montana assuming the 404 program. It is my opinion that the State, at this time, does not have sufficient legal authority to assume a program of this magnitude, nor do we have the staff or the funding that would be required.

EPA regulations require that: (1) the state program must regulate all of the activities covered by the federal program, and (2) the state must exert its regulatory function over all of the waters subject to the federal permitting process. At present, Montana does not have regulatory authority over all the activities nor all the waters covered in the federal program. Michigan, whose existing laws at the time they began the assumption process were far more comprehensive than ours currently are, enacted additional legislation to comply with these program requirements. Certainly, it would be necessary for Montana to enact a great deal of new legislation to gain the authority to even be considered as a candidate to assume the federal 404 program.

Section 4 of the document discusses, in detail, Michigan's program. The Land Resource Programs Division of the Michigan Department of Natural Resources is responsible for administration of the state's regulatory program, which now consists of both the state and federal programs. This division consists of four sections and

~~Letter to Cathy Jones~~

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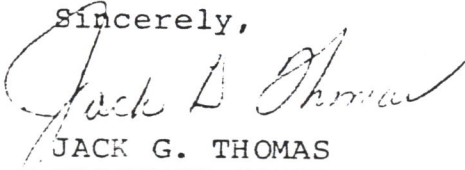
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field staff totaling 105 positions. The proposed budget for FY 82-83 for the state's regulatory programs was over \$1.6 million, which included \$274,100 specifically for the 404 program assumption. We feel it would be virtually impossible at this time to secure the funding from the state general fund to undertake a regulatory program as is needed to assume the federal 404 program. Similarly, acquiring the number of positions needed to institute a regulatory program would be prohibitive at this time.

In summary, for the reasons described above, we do not feel it would be legally or financially feasible for the State of Montana to assume the 404 program. I trust that after reviewing the document, you will reach the same conclusion.

We invite any comments you may have and ask that you return the document after your review.

Sincerely,



JACK G. THOMAS
RESOURCE CONSERVATIONIST
CONSERVATION DISTRICTS DIVISION

enclosure

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